

5:05CV224-3-V
(5:03CR4-3-V)

UNITED STATES OF AMERICA,
Respondent.

On May 23, 2003, Petitioner appeared in a Rule 11 Proceeding before a Federal Magistrate Judge and entered a plea of guilty, which was accepted by the Magistrate Judge, for one count of conspiracy to possess with intent to distribute cocaine and cocaine base, in violation of 21 U.S.C. § 846, two counts of possession of cocaine with intent to distribute, in violation of 21 U.S.C. § 841, and one count of aiding and abetting the possession of cocaine with intent to distribute, in violation of 21 U.S.C. § 841 and 18 U.S.C. § 2. On September 2, 2003, pursuant to

the government's motion for downward departure for Petitioner's substantial assistance, this Court sentenced Petitioner to be imprisoned for a term of 240 months. On April 22, 2004, the United States Court of Appeals for the Fourth Circuit, by unpublished opinion, affirmed Petitioner's conviction and sentence, United States v. Gonzalez-Jaimes, 91 Fed. Appx. 886 (4th Cir. 2004).

Subsequent to the Fourth Circuit's affirming Petitioner's sentence and conviction, Petitioner filed on November 8, 2004, a "Motion for Appointment of Counsel" and "Motion to Request the Production of Papers Pertaining to the Case" (Document Numbers 444,445, in criminal case 5:03cr4-3.) In its December 20, 2004 Order, the Court notified Petitioner that because he had already been sentenced and directly appealed his conviction and sentence to the Court of Appeals for the Fourth Circuit, his motions appeared to be collaterally attacking his sentence and therefore were essentially motions pursuant to 28 U.S.C. § 2255 (Document Number 461, 5:03cr4-3.) Because the motions were Petitioner's first to be construed as a § 2255, under the guidelines established by United States v. Emmanuel, 288 F.3d 644 (4th Cir. 2002), the Court informed Petitioner of the legal ramifications of such action. The Court notified Petitioner that he had until February 1, 2005 to construe his November 8, 2004 motion as a § 2255 motion and that he had until or around June 28, 2005 to file any motion pursuant to § 2255.

On January 12, 2005 Petitioner filed a "Motion for Appointment of Counsel" and "Motion for the Production of Sentencing Hearing and Plea Hearing Transcripts, and Copy of Plea Agreement," and requested that these motions supercede any of his previous motions (Document Number 468, 5:03cr4-3.) This Court construed the filing of these motions as evidence that Petitioner did intend to collaterally attack his sentence pursuant to 28 U.S.C. § 2255. However, because these motions did not articulate a reason for pursuing a collateral attack on his sentence,

the Court allowed Petitioner sixty (60) days from its July 15, 2005 Order to present legal issues in support of his § 2255 motion.

Petitioner has not filed a document articulating a reason for pursuing a collateral attack on his sentence in the time allowed by the Court. Therefore Petitioner's Motion to vacate is dismissed.

NOW, THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence, (Document Number 2), is dismissed.

Signed: October 5, 2005

A handwritten signature in black ink, reading "Richard L. Voorhees". The signature is written in a cursive style with a horizontal line underneath the name.

Richard L. Voorhees
United States District Judge

